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TRICOR AMERICA, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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16

17 TRICOR AMERICA, INC., a California
18 corporation

19 Plaintiff,

20 vs.

21 DHL CANADA EXPRESS, LTD., a
22 Canadian corporation; LOOMIS CANADA
HOLDING COMPANY, INC., a Canadian
23 corporation; and DOES 1 through 25,
inclusive,

24 Defendants.

25 AND RELATED COUNTERCLAIM

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Case No. C 07 4949 CRB

**JOINT CASE MANAGEMENT
STATEMENT / RULE 26(f) REPORT;
[PROPOSED] ORDER**

Complaint filed: 9/25/07

First Amended Complaint filed: 11/27/07

Assigned to Judge Charles R. Breyer

1 The parties to the above-entitled action jointly submit this Case Management Conference
2 Statement / Rule 26(f) Report, and request that the Court adopt it as its Case Management Order
3 in this case.

4 **1. JURISDICTION AND SERVICE**

5 This is an action for breach of contract and related claims, counterclaims, and defenses;
6 the amounts in controversy exceed \$75,000. Plaintiff, Tricor America, Inc. ("Tricor"), is a
7 corporation incorporated under the laws of California and qualified to do business in California,
8 with its principal place of business in the City of South San Francisco, in the County of San
9 Mateo, California. Defendant DHL Express (Canada), Ltd., is a corporation amalgamated under
10 the laws of Canada. Defendant Mayne Logistics Loomis, Inc., erroneously sued herein as Loomis
11 Canada Holding Co., Inc., is a corporation amalgamated under the laws of Canada, and a wholly
12 owned subsidiary of DHL Express (Canada), Ltd. (Both corporations will be hereinafter referred
13 to collectively as "DHL.")

14 Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332
15 (diversity jurisdiction). Personal jurisdiction and venue are not contested. No parties remain to be
16 served.

17 **2. FACTS**

18 Tricor and DHL, separately, are in the business of providing courier services. Tricor
19 alleges that on or about March 2, 1984, Tricor and DHL entered into an agreement wherein Tricor
20 agreed to provide any courier services requested of it by DHL and DHL agreed to pay for the
21 courier services pursuant to agreed upon credit terms of net 30 and subject to the rates in effect at
22 the time of service. Tricor further alleges that said agreement was terminable at will and subject
23 to rate changes at any time. DHL disputes the existence of the alleged 1984 agreement.

24 Tricor and DHL have a history of providing courier services for one another. Tricor
25 alleges that in or about July 2006, DHL sent a letter dated July 17, 2006 to Tricor as notice that as
26 of July 24, 2006, it was raising the rates by which DHL would charge Tricor for further services.
27 Tricor further alleges that in response to the DHL rate increase, in November 2006, Tricor sent a
28 letter dated November 23, 2006 to DHL as notice that as of November 15, 2006, the rate for

1 services was increasing, and the alleged notice detailed the new rates. DHL is in possession of
2 that letter, but alleges no knowledge regarding when and by whom that letter was received.

3 Tricor alleges that DHL continued to request courier services from Tricor after the rate
4 increase and paid for two months' worth of services at the new rate, but then continued to request
5 services and failed to pay an amount for the following months' services. Tricor alleges that
6 DHL's failure to pay for services rendered has resulted in \$146,193.26 being due and owing to
7 Tricor. The parties' informal attempts to resolve this dispute short of litigation were unsuccessful.
8 Accordingly, Tricor filed suit alleging causes of action for breach of contract, failure to pay
9 account stated, failure to pay *quantum meruit*, and negligent misrepresentation.

10 In response, DHL alleges that, of the post-increase charges totaling \$216,872.97, DHL
11 tendered two payments totaling \$76,636.80. DHL alleges that these payments were made without
12 actual knowledge that the amounts paid reflected the rate increases that Tricor alleges were
13 effective November 15, 2006. DHL alleges that, upon closer review of the large payments made,
14 DHL discovered that Tricor had made rate increases many times higher than Tricor's previous
15 rates, and far greater than DHL's new rates and the rates standard for the courier services
16 industry. DHL alleges the payment of \$76,636.80 was the result of mistake, and therefore did not
17 constitute assent to the new rates. Accordingly, DHL alleges that Tricor was unjustly enriched by
18 DHL's overpayment, and DHL seeks restitution for the difference between its payment and the
19 reasonable value of Tricor's services. DHL disputes liability for the \$146,193.26.

20 DHL also alleges that Tricor failed to pay \$1,254.23 for courier services provided by DHL
21 to Tricor. Accordingly, DHL alleges breach of contract and failure to pay *quantum meruit*.

22 3. LEGAL ISSUES

23 The following legal theories are at issue in this case: contract formation; modification of
24 contract; unilateral mistake; breach of contract; failure to pay account stated; failure to pay
25 *quantum meruit*; negligent misrepresentation; and unjust enrichment.

26 4. MOTIONS

27 DHL's Rule 12(b)(6) Motion to Dismiss with respect to the Original Complaint was
28 withdrawn subsequent to Tricor's filing and service of the First Amended Complaint. No motions

1 are pending. Tricor and DHL both anticipate filing motions for summary judgment. Discovery
2 motions may be filed as well. *See Section 17 re Proposed Schedule.*

3 **5. AMENDMENT OF PLEADINGS**

4 The parties do not presently anticipate any amendments to the pleadings. The parties
5 propose February 15, 2008 as the last day to amend pleadings and add parties. *See Section 17 re*
6 *Proposed Schedule.*

7 **6. EVIDENCE PRESERVATION**

8 The parties have been advised by their respective counsel to preserve documentary and
9 electronic evidence relevant to the issues in this action.

10 **7. DISCLOSURES**

11 The parties propose January 15, 2008, as the last day to comply with Rule 26(a) initial
12 disclosure requirements. *See Section 17 re Proposed Schedule.*

13 **8. DISCOVERY**

14 The parties have met and conferred regarding a discovery plan. The parties agree that the
15 limitations on discovery tools and the subject matter of discovery as set forth in the Federal Rules
16 and the Local Rules for the Northern District should govern this action.

17 The subjects of discovery include, but are not limited to: witnesses and documents
18 concerning contract formation and modification; witnesses and documents concerning services
19 provided to each other by the parties; witnesses and documents concerning invoices and payments
20 issued between the parties; all communications, written or oral, between the parties relevant to the
21 matters in dispute in this action.

22 *See Section 17 re Proposed Schedule.*

23 **9. CLASS ACTIONS**

24 This is not a class action case.

25 **10. RELATED CASES**

26 There are no related cases.

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1 **11. RELIEF**

2 As set forth in its First Amended Complaint, Tricor seeks damages in the sum of
3 \$146,193.26, and more, according to proof, as well as prejudgment interest on said sum at the
4 maximum legal rate. Tricor also seeks its reasonable attorneys' fees and costs incurred by it in
5 prosecuting this action.

6 As set forth in its Answer to First Amended Complaint and Counter-Claim, DHL seeks
7 damages in the sum of \$1,254.23, and more, including interest as allowed by law, according to
8 proof. Alternatively, DHL seeks damages in the amount of the reasonable value of DHL's
9 services to Tricor, according to proof. DHL also seeks restitution in the amount of the difference
10 between \$76,636.80 and the reasonable value of Tricor's services to DHL, according to proof,
11 and more, including interest as allowed by law, according to proof. DHL also seeks an award of
12 its attorneys' fees and costs incurred by it in this action.

13 **12. SETTLEMENT AND ADR**

14 As indicated in the parties' December 14, 2007 Joint Stipulation Selecting ADR Process,
15 and the Court's corresponding Order, the parties have agreed to private mediation before Roger
16 Brothers, Esq. The parties propose March 31, 2008 as the last day to complete ADR. *See Section*
17 *17 re Proposed Schedule.*

18 DHL submitted its ADR Certification by Party and Counsel on December 17, 2007. Tricor
19 filed its ADR Certification with the Court on December 21, 2007.

20 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

21 The parties respectfully do not consent to have this matter referred to a United States
22 Magistrate Judge for all purposes.

23 **14. OTHER REFERENCES**

24 This case is not suitable for references to binding arbitration, a special master, or the
25 Judicial Panel on Multidistrict Litigation.

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1 **18. TRIAL**

2 DHL has demanded a trial by jury. The parties anticipate trial will last 3-5 days. The
3 parties propose a trial date of July 21, 2008. *See Section 17 re Proposed Schedule.*

4 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

5 The parties have determined that there is no need to file a Certification of Non-Party
6 Interested Entities or Persons.

7 **20. OTHER MATTERS**

8 None.

9
10 Respectfully submitted,

11 Dated: December 21, 2007

ROBINSON & WOOD, INC.

12
13 By: 

14 ARTHUR J. CASEY
15 CARRIE M. DUPIC
16 Attorneys for Defendants,
17 DHL EXPRESS (CANADA), LTD.,
a Canadian corporation; and
MAYNE LOGISTICS LOOMIS, INC.,
a Canadian Corporation

18 Dated: December 26, 2007

LAW OFFICES OF LAURA D. EACH, PC

19
20 By: 

21 LAURA EACH NGUYEN
22 Attorney for Plaintiff,
23 TRICOR AMERICA, INC.

24 **[PROPOSED] ORDER**

25 The Court hereby adopts the above Joint Case Management Statement as its Order.

26 IT IS SO ORDERED.

27 Dated: _____

28 The Honorable Charles R. Breyer